November 9, 2000

Mary L. Cottrell, Secretary

Department of Telecommunications and Energy

One South Station, 2nd Floor

Boston, Massachusetts 02110

Re: Fitchburg Gas & Electric Light Company, D.T.E. 99-60, Default Service Tariff Filing M.D.T.E. No. 60 for January - May 2001

Dear Secretary Cottrell:

On November 1, 2000, Fitchburg Gas and Electric Light Company ("Fitchburg" or "Company") filed the results of its solicitation for default service supply for the period December 1, 2000 through May 31, 2001 and requested Department approval of the default service supply contract included in the filing. On November 3, 2000, the Company filed proposed new tariffs for effect January 1, 2001, with retail rates reflecting costs under the new default service supply contract.[(1)] The Company has also filed a Motion seeking protective treatment of all of the material provide in its default service supply contract filing -- a copy of the Request for Proposal ("RFP"), a "notice of RFP provided to ISO New England, copies of the resulting bids, the Company's evaluation of the bids, and the resulting power supply contract -- as well as the class-specific line loss

data used to develop its proposed retail Default Service rates. The proposed new rates would result in significant bill increases for the Company's customers. Absent any reduction in the Company's transition or distribution rates, typical bills will increase by 27.8-percent for low-income residential customers, 21.7-percent for other residential customers, 22.7-percent for commercial (G-2) customers, and 37.7-percent for large industrial (G-3) customers. These increases are on top of significant bill increases that are now scheduled to take effect December 1, 2000: 16.2-percent, 12.1-percent, 13.1-percent, and 15.3-percent, respectively.

The Attorney General has already urged the Department to refrain from allowing any further rate increases until it resolves long pending issues that provide opportunities to mitigate the impact on consumers of such increases and as the Department has yet to act the important pending matters that concern Fitchburg,[(2)] he urges the Department withhold action on the proposed increase until it responds to the legitimate interests of the Company's customers. However, even if the Department does consider the proposed increase at this time, the Attorney General submits that the Department should deny both the Company's request for protective treatment and it proposed class specific default service rates. Notwithstanding the class-specific approach adopted by the Department in *Pricing and Procurement of Default Service*, D.T.E. 99-60-B (2000), in this proceeding the Company should be required to develop and put into place a single uniform default service rate for all of its customer classes.

Motion For Protective Order

The Company seeks protective treatment for all but the cover letter of its November 1, 2000 filing: the Default Service RFP, the "notice of the RFP" filed with ISO New England; copies of the bids, FG&E's evaluation of the responses, and the resulting executed contract. It makes a number of bald assertions to support it claim that the material in question is confidential and competitively sensitive:

- •that its disclosure would harm its negotiating position in future procurements;
- •that the terms of its RFP provide that all bid information will be treated as confidential;
- •that supplier bids requested confidential treatment; and
- •that disclosure would impair its future ability to minimize the price paid for Default Service.

Fitchburg Motion, p. 3.

The Department's authority to protect documents from public disclosure is limited. Chapter 25, § 5D provides that the Department is exempt only "in certain narrowly defined circumstances, from the general statutory mandate that all documents and data received by an agency of the Commonwealth are to be viewed as public records... available for public review." *Boston Edison Company*, D.T.E. 97-95, p. 13-14 (1998). Indeed, the statute provides expressly that:

[t]here shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection.

G.L. c. 25, § 5D. The Department has proscribed a three-part test to determine whether, and to what extent, information may be protected from public disclosure:

- •the information for which protection is sought must constitute "trade secrets, confidential, competitively sensitive or other proprietary information;"
- •the party seeking protection must overcome the presumption against protection by "proving" the need for its non-disclosure; and
- •even where a need for non-disclosure is established, protection will be accorded to only so much of that information as is necessary to meet that particular need.

Boston Edison Company, D.T.E. 97-95, p. 13-14.

Fitchburg has not carried its burden to prove the need to protect this material from disclosure. The Attorney General recognizes the need for confidentiality in regard to competitively sensitive information and shares the Company's stated concern in obtaining the lowest price for power to serve consumers, but he also believes that G.L. c. 25, § 5D requires more than bald assertions that material "contains confidential and competitively sensitive information" before the material can be protected from disclosure. The non-specific nature of the Company' s request as well as the utter lack of any explanation of why the information requires protection for disclosure requires that the Department reject the Fitchburg motion. Neither the terms of the Company's RFP or the bids themselves are determinative here. Satisfaction of the requirements of G.L. c. 25, § 5D must be based on the Company's proof that the information is, in fact, confidential and competitively sensitive, and that a need for protection outweighs the presumption in favor of disclosure. There is simply no obvious and plausible basis to conclude that much of the material in question -- the description of the solicitation and evaluation processes, the general terms of the RFP, the price of the winning bid -- is either confidential or competitively sensitive

or that it requires protection from disclosure. The Company has elected to not provide the necessary basis for a Department finding and it certainly should not be allowed to burden the Department and interested parties with the task of identifying the subset of the information in question for which a request for protection is even colorable. The Company's motion for a protective order should be denied.

Class-Specific Default Service Rates

In his October 19, 2000 comments in which he urged the Department to reject Fitchburg's Default Service rate proposal for December, 2000, the Attorney General noted that the class-specific rates proposed by the Company were not based on the methodology prescribed by the Department in *Pricing and Procurement of Default Service,* D.T.E. 99-60-B (2000). *Comments of the Atttorney General*, p. 1, n. 1. The Company's proposal here suffers from the same flaw and based upon his review of the Company's RFP, it is not clear whether the Company's solicitation complied with the Department's instructions. Given that the Company's proposal does not in any way reflect a market valuation of the costs of serving particular customer classes, the Department's apparent goal in D.T.E. 96-50-B, the Attorney General submits that the Department should reject the Company's proposed class-specific rates.

Sincerely,

George B. Dean

Assistant Attorney General

cc: Scott J. Mueller, Esq.

Matthew T. Morais, Esq., DOER

Jeanne Voveris, Esq., DTE

Service List

1. Although the new Default Service supply contract is intended to provide a power supply for the Company's December 2000 Default Service load, the December 2000 price for Default Service was established earlier, in a filing approved by the Department on October 19, 2000.

2. In particular, for more than two years the Department has failed to act on unambiguous indications that the Company's electric distribution rates are excessive and could be reduced by as much as 0.5¢ per kWh. This inaction has occurred notwithstanding the urging of the Attorney General that the Department take action in the context of the 1998 review of the Company's restructuring plan and the G.L. c. 164, § 93.